

AMNESTY INTERNATIONAL

**The Case of
Mumia
Abu-Jamal
A Life in the
Balance**

THE OPEN MEDIA PAMPHLET SERIES

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Mumia Abu-Jamal has been incarcerated on Pennsylvania's death row for the past 17 years. His case has generated more controversy and received more attention, both national and international, than that of any other inmate currently under sentence of death in the United States of America (USA).

Mumia Abu-Jamal, black, was convicted and sentenced to death in July 1982 for the murder of white police officer Daniel Faulkner on 9 December 1981. He has steadfastly maintained his innocence since 1981. Since the trial, those advocating his release or retrial have contested the validity of much of the evidence used to obtain his conviction. These accusations have been countered by members of the law enforcement community and their supporters, who have agitated for Mumia Abu-Jamal's execution while maintaining that the trial was unbiased and fair.

In light of the contradictory and incomplete evidence in this case, Amnesty International can take no position on the guilt or innocence of Mumia Abu-Jamal. Nor has

the organization identified him as a political prisoner, although it has previously expressed its concern over the activities of a government counterintelligence program, which appeared to number Abu-Jamal among its targets (see page 24). However, the organization is concerned that political statements attributed to him as a teenager were improperly used by the prosecution in its efforts to obtain a death sentence against him. In any event, the administration of the death penalty in the USA remains a highly politicized affair, sanctioned and supported by elected officials for its perceived political advantages. The politicization of Mumia Abu-Jamal's case may not only have prejudiced his right to a fair trial, but may now be undermining his right to fair and impartial treatment in the appeal courts.

After many years of monitoring Mumia Abu-Jamal's case and a thorough study of original documents, including the entire trial transcript, the organization has concluded that the proceedings used to convict and sentence Mumia Abu-Jamal to death were in violation of minimum international standards that govern fair trial procedures and the use of the death penalty. Amnesty International therefore believes that the interests of justice would best be served by the granting of a new trial to Mumia Abu-Jamal (see conclusion).

In October 1999, Abu-Jamal filed his initial federal appeal. The federal courts represent Abu-Jamal's final opportunity to have many of the troubling issues in his case addressed and corrected. However, as discussed below, the 1996 *Anti-terrorism and Effective Death Penalty Act* severely limits the federal courts' ability to

ensure that legal proceedings at state-level guaranteed the defendants' rights enshrined in the US Constitution and under international human rights standards. Amnesty International has chosen this time, a time when Abu-Jamal's life is in the balance, to release this report.

Mumia Abu-Jamal is one of more than three and a half thousand people on death row in 37 states and under federal law throughout the USA. By the end of 1999, 598 prisoners had been put to death in 30 states since executions resumed in 1977; in 1999 alone, 98 prisoners died at the hands of the state, a record year since the 1950s. The US authorities have repeatedly violated international minimum safeguards in their continuing resort to capital punishment. Violations include the execution of the mentally impaired, of child offenders, and of those who received inadequate legal representation at trial. Those sentenced to death in the USA are overwhelmingly the poor, and disproportionately come from racial and ethnic minority communities. The risk of wrongful conviction remains high, with more than 80 prisoners released from death rows since 1973 after evidence of their innocence emerged. Many came close to execution before the courts acted on their claims of wrongful conviction. Others have gone to their deaths despite serious doubts concerning their guilt.

Amnesty International unconditionally opposes the death penalty under all circumstances. Even if it were possible for a country to create a judicial system entirely fair and free from bias and error, the punishment of death would still violate the most fundamental of all human rights. Each death sentence and execution is an affront

to human dignity: the ultimate form of cruel, inhuman and degrading punishment.

In opposing the death penalty, Amnesty International in no way seeks to minimize or condone the crimes for which those sentenced to death and executed were convicted. Nor does the organization seek to belittle the appalling suffering of the families of murder victims, for whom it has the greatest sympathy. However, the finality and cruelty inherent in the death penalty render it incompatible with norms of modern day civilized behaviour and an inappropriate and unacceptable response to violent crime.

The continued and accelerating use of the death penalty is one of many serious human rights violations that Amnesty International has identified and repeatedly raised with the US authorities. These other concerns include a nationwide pattern of police brutality; the physical and sexual abuse of prisoners, inhuman or degrading conditions of confinement and the mistreatment of asylum seekers.¹

THE BACKDROP: PHILADELPHIA, A CITY OF RACIAL TENSIONS, POLICE BRUTALITY AND POLICE CORRUPTION

The shooting of Officer Daniel Faulkner in 1981 and Mumia Abu-Jamal's trial the following year took place in Philadelphia, a city fraught with tension between the predominately white authorities and the African American and other minority communities. Both before and since that time, numerous instances have come to light of police brutality and the use of disproportionate force

with lethal consequences; of the corruption of police officers and the fabrication of evidence against those suspected of criminal acts.²

In 1973, a federal judge for the US District Court stated that police abuse occurred with such frequency in Philadelphia that it could not be "dismissed as rare, isolated instances" and that city officials did "little or nothing" to punish or prevent police abuse.

In 1979, the US Department of Justice filed a lawsuit against the then-mayor of Philadelphia, Frank Rizzo, and other city officials for condoning police brutality. The lawsuit listed 290 persons shot by the city's police officers between 1975 and 1979, the majority of whom were from ethnic minorities. During Frank Rizzo's eight years as mayor, fatal shootings by Philadelphia police officers increased by 20 per cent annually. In the year after he left office, 1980, fatal shootings declined 67 per cent.³ Mayor Rizzo appeared to tolerate police misconduct. In 1978, he told an audience of 700 police officers "Even when you're wrong, I'm going to back you."⁴

An investigation in 1978 by the Pennsylvania House of Representatives Sub-Committee on Crime and Corrections found that a small but significant number of Philadelphia police routinely engaged in verbal and physical abuse of citizens to a degree the subcommittee considered "lawless." The investigation concluded that the level of police abuse had reached that of homicidal violence and that Philadelphia lacked the necessary police leadership to control the lawlessness.

Also in 1978, the police became involved in a siege of a house occupied by members of MOVE.⁵ During an

attempt to force the occupants to leave the building a shot was fired, causing the police to open fire at the house (it is disputed whether the police or those in the house fired the initial shot). At this time, one police officer was fatally wounded; MOVE members later maintained that the police officer was killed by gun fire from other officers. As the occupants surrendered to the police, television cameras filmed a police officer striking Delbert Africa (all members of MOVE adopt the second name of Africa) with the butt of a shotgun and then dragging him along the ground as other police officers kicked him. Police bulldozed the house to the ground the following day, destroying the crime scene and making analysis of many of the day's events impossible.⁶ Nine members of MOVE were tried on charges of third degree murder, conspiracy, and multiple counts of attempted murder and aggravated assault; all were found guilty and sentenced to 30 to 100 years in prison.

Mumia Abu-Jamal was closely involved with MOVE. It is highly likely that the officers who arrested him, although perhaps unaware of his identity, would have immediately associated him with the organization because of his dreadlocks, a hairstyle adopted by all members of MOVE as part of their beliefs. Abu-Jamal was also a former member of the Black Panther Party (BPP) and was under surveillance by the FBI's Counter-intelligence Program, COINTELPRO (see box).⁷ Prior to his arrest, Abu-Jamal worked as a journalist and had written articles critical of the authorities in Philadelphia. To supplement his income, he was working as a taxi cab driver at the time of the crime.

**THE CRIME: THE SHOOTING OF POLICE OFFICER
DANIEL FAULKNER**

On 9 December 1981, at approximately 3.55am, Officer Daniel Faulkner of the Philadelphia Police Department stopped a car driven by Mumia Abu-Jamal's brother, William Cook. A struggle ensued between the two men. Mumia Abu-Jamal, who was driving a cab in the vicinity, observed his brother in an altercation with the officer and got out of his vehicle. Minutes later, more police officers arrived on the scene to find Officer Faulkner dead from two bullet wounds to the head and back. Mumia Abu-Jamal was sitting nearby wounded in the chest by a bullet from the police officer's gun. Abu-Jamal's own legally-registered gun was found a few feet away from where he sat.

Media coverage of the case as it proceeded to trial referred extensively to Abu-Jamal's affiliations with MOVE and his former membership in the Black Panther Party. The continual references to Abu-Jamal's past political activities caused Joe Davidson, president of the Association of Black Journalists to state "[w]e are disturbed by disparaging news reports about Mr. Jamal's political and religious beliefs. As an organization dedicated to truth and fairness in journalism, we will continue to monitor media coverage on this matter. We hope that Mr. Jamal will be tried in the courtroom and not in the press."⁸ Following investigations by the authorities, pre-trial hearings in the case began on 5 January 1982. On 7 June 1982, the trial of Mumia Abu-Jamal on a charge of first degree murder and possession of an instrument

of crime commenced in Philadelphia, amid intense publicity.

THE TRIAL JUDGE: AN INDEPENDENT AND FAIR ARBITER OF JUSTICE?

*"The judiciary shall decide matters before them impartially, on the basis of the facts and in accordance with the law, without restrictions, improper influences, inducements, pressure, threats or interferences, direct or indirect, from any quarter or for any reason."*⁹

Where a defendant has selected trial by jury, the ultimate disposition of the case rests with the jurors and not with court officials. But the overall conduct of the trial is the responsibility of the presiding judge and jurors look to the judge for guidance and instruction on the complex legal issues before them. Any hint of bias from the bench may thus have a profound effect on the jury's deliberations.

The trial of Mumia Abu-Jamal was presided over by Judge Albert F. Sabo. His history of involvement with the police and law enforcement community has raised concerns that he was not the most suitable choice of official to oversee the trial of a defendant accused of killing a police officer. Albert Sabo was an Undersheriff of Philadelphia County for 16 years before becoming a judge in 1974. His official biography lists him as a former member of the National Sheriffs Association, "retired Fraternal Order of Police" (FOP) and as associated with the Police Chiefs' Association of South East Pennsylvania.¹⁰ As a judge he was no stranger to the death penalty.

Over a period of 14 years, he presided over trials in which 31 defendants were sentenced to death, more than any other US judge as far as Amnesty International is aware. Of the 31 condemned defendants, 29 came from ethnic minorities.¹¹

The judicial conduct of Judge Sabo has been a cause for concern to many members of the Philadelphia legal community for a number of years. A 1983 Philadelphia Bar survey found that over one third of the responding attorneys considered Judge Sabo unqualified to be on the bench. When asked about the survey, Judge Sabo appeared to reveal his bias against the defence by stating that if he were a defence attorney "I wouldn't vote for me either."

In 1992 the *Philadelphia Inquirer* reviewed 35 homicide trials presided over by Judge Sabo.¹² The investigation concluded that: "through his comments, his rulings and his instructions to the jury" Judge Sabo "favored prosecutors." According to the report, in one case, Judge Sabo even urged the prosecution to introduce evidence because "it would be helpful to [get] a conviction." A review of the court records by the *Inquirer* showed "that most of the homicide judges in Philadelphia hear more murder cases than Judge Sabo with fewer death sentences." In the same article, the *Inquirer* also concluded: "The assignment of a judge, like the naming of a lawyer, can be a life-or-death matter for a murder suspect. Some, like Judge Albert F. Sabo, are viewed as prosecution-minded. Others are seen as more favorable to defense. One report likened the system to a 'crap shoot'."

Throughout Abu-Jamal's trial—a trial to determine whether the defendant would live or die—Judge Sabo

appeared to be more concerned with expediency than fairness. For example, during the proceedings of 17 June, he stated "I don't want to be held up on lousy technicalities...what do I care?" and "As far as I'm concerned, it can wait until lunchtime. Whatever you want to do, but let's do something. I have a jury waiting out there."

In 1995, defence lawyers requested that Judge Sabo recuse (i.e. remove) himself from presiding over an evidentiary hearing on whether Mumia Abu-Jamal's original trial was fair, on the grounds of "his inability to endow this proceeding with... the appearance of fairness and impartiality." Judge Sabo refused. During the hearing, he was openly hostile to the defence, causing one commentator to write: "[t]hroughout the internationally scrutinized post-conviction hearing, which ran from July 26 to August 15, and the closing arguments on September 11, Judge Sabo flaunted his bias, oozing partiality toward the prosecution and crudely seeking to bully Weinglass [a defence lawyer], whose courtroom conduct was as correct as Sabo's was crass."¹³ On 16 July 1996, the *Philadelphia Inquirer* described Judge Sabo's adjudication of the hearings: "The behavior of the judge was disturbing first time around—and in hearings last week he did not give the impression to those in the courtroom of fair-mindedness. Instead, he gave the impression, damaging in the extreme, of undue haste and hostility toward the defense's case."

THE DEFENCE: MUMIA ABU-JAMAL'S LEGAL REPRESENTATION AT TRIAL

"They [defence lawyers] must aid their clients in every appropriate way, taking such actions as is neces-

sary to protect their clients' rights and interests, and assist their clients before the courts."¹⁴

US death penalty procedures are a uniquely complex area of criminal law, in which even attorneys experienced in non-capital trials may fail to adequately represent their clients. Amnesty International has documented numerous cases of death row prisoners who were represented at trial by woefully inadequate defence attorneys.¹⁵ Its concern over such cases is shared by other international human rights groups and inter-governmental bodies. In 1996, for example, the International Commission of Jurists (ICJ), an international non-governmental organization which takes no position on the death penalty *per se*, published a report that was highly critical of the legal representation afforded defendants in capital cases, concluding: "the administration of the death penalty in the United States will remain arbitrary, and racially discriminatory, and prospects of a fair hearing for capital offenders cannot (and will not) be assured" without substantial remedial steps.¹⁶ The UN Human Rights Committee (HRC—the expert body empowered to monitor countries' compliance with the International Covenant on Civil and Political Rights—the ICCPR) has also made note of the concern over the "the lack of effective measures [in the USA] to ensure that indigent [poor] defendants in serious criminal proceedings, particularly in state courts, are represented by competent counsel."¹⁷

At the time of Mumia Abu-Jamal's trial, Pennsylvania had *no* minimum standards for those appointed to represent defendants on trial for their life. Attorneys in

capital cases were not required to pass any special examinations or to have reached any level of experience in defending those facing trial on serious charges.¹⁸

Mumia Abu-Jamal was initially represented by a court-appointed attorney, Anthony Jackson. At a pretrial hearing on 13 May 1982, Abu-Jamal requested the court's permission to represent himself at trial because he was dissatisfied with Jackson's performance.¹⁹ Judge Ribner, the judge overseeing the pre-trial hearings, granted his request but, over Abu-Jamal's vigorous objection, appointed Jackson as backup counsel. Jackson also protested at being appointed as backup counsel, stating that he did not know what it entailed, but was told by the judge; "You can fight that out with Mr. Jamal." Jackson was given no clarification by the court as to his role in the trial as backup counsel.

Since Mumia Abu-Jamal was obviously unable to conduct investigations due to his continued detention, his access to a fully prepared lawyer—even as "backup counsel"—was vital to ensure a fair hearing. In a sworn affidavit dated 17 April 1995, Jackson admitted to being "unprepared" for trial and that he "abandoned all efforts at trial preparation" three weeks before the start of the trial after Mumia Abu-Jamal had obtained the right to represent himself.

During jury selection on the third day of the trial, at the suggestion of the prosecution, Judge Sabo withdrew permission for Mumia Abu-Jamal to act as his own attorney—supposedly only for the duration of jury selection. Judge Sabo based this decision on Abu-Jamal's alleged slowness in questioning potential jurors and on the

grounds that his status as an accused murderer instilled fear and anxiety in the jurors. However, Judge Sabo did concede that "...it is true I have not rebuked Mr. Jamal at any time [during jury selection]."

Jackson objected to the ruling, pointing out to Judge Sabo that "The last case I had before you, it took us nine days to select a jury and it certainly didn't have as much publicity as this case." Jackson noted that jury selection in another homicide case had taken five weeks to complete. He went on to state that "in all homicide cases, particularly in capital cases... jurors express some apprehension, some unsettlement, some fear with regard to the whole process." These objections were to no avail, Judge Sabo continued to deny Abu-Jamal the right to represent himself.

The *Philadelphia Inquirer* described Abu-Jamal's conduct prior to his removal as lead counsel as "intent and business like" and "subdued." In the first two days of the trial, Abu-Jamal had questioned 23 prospective jurors, successfully challenging two for "cause" (bias), defeating a prosecution challenge for cause, and exercising two peremptory strikes (the right to remove a prospective juror without giving reasons).

Amnesty International's own examination of the trial transcript found no justifiable reason for the revoking of Mumia Abu-Jamal's right to question potential jurors. At no point during his questioning was he rude or aggressive and his examinations are very similar, in terms of length, to those of the prosecution. His questions were pertinent to the selection of a fair jury. The removal of Abu-Jamal's right to represent himself at this point in

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Based on its review of the trial transcript and other original documents, Amnesty International has determined that numerous aspects of Mumia Abu-Jamal's case clearly failed to meet minimum international standards safeguarding the fairness of legal proceedings. Amnesty International therefore believes that the interests of justice would best be served by the granting of a new trial to Mumia Abu-Jamal. This pamphlet explains why.



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